



February 25, 2002

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## ENGROSSED HOUSE BILL No. 1119

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DIGEST OF HB 1119 (Updated February 21, 2002 4:50 PM - DI 105)

**Citations Affected:** IC 15-4.

**Synopsis:** Seed contracts. Provides that a seed supplier may not enter real property owned or occupied by the farmer unless certain conditions are satisfied. Provides a cause of action to a farmer against a seed supplier if the supplier wrongfully enters the real property owned or occupied by the farmer.

**Effective:** Upon passage.

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### Grubb, Friend, Murphy

(SENATE SPONSORS — JACKMAN, YOUNG R, HERSHMAN, FORD)

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January 8, 2002, read first time and referred to Committee on Agriculture, Natural Resources and Rural Development.

January 29, 2002, amended, reported — Do Pass.

February 4, 2002, read second time, ordered engrossed. Engrossed.

February 5, 2002, read third time, passed. Yeas 90, nays 5.

#### SENATE ACTION

February 11, 2002, read first time and referred to Committee on Judiciary.

February 25, 2002, amended, reported favorably — Do Pass.

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EH 1119—LS 7265/DI 75+



February 25, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## ENGROSSED HOUSE BILL No. 1119

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A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 15-4-13 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON  
3 PASSAGE]:

4       **Chapter 13. Inspections Under Seed Contracts**

5       **Sec. 1. (a) Except as provided in section 2 of this chapter, this**  
6 **chapter applies to the inspection of seed and the crop growing from**  
7 **seed by a seed supplier under the seed supplier's rights in a seed**  
8 **contract.**

9       **(b) Other applicable Indiana law not in conflict with this**  
10 **chapter applies to a seed supplier inspecting seed and the crop**  
11 **growing from seed under the seed supplier's rights in a seed**  
12 **contract.**

13       **Sec. 2. This chapter does not apply to an inspection by a seed**  
14 **supplier under the provisions of a production contract.**

15       **Sec. 3. As used in this chapter, "farmer" refers to a person who**  
16 **is engaged in commercial farming and who plants seed in Indiana**  
17 **under a seed contract for purposes of growing a commercial grain**

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crop.

Sec. 4. As used in this chapter, "production contract" refers to any of the following:

- (1) A contract to grow seed for demonstration purposes.
- (2) A contract to grow seed for research purposes.
- (3) A contract to grow seed under which the seed supplier:
  - (A) retains title to the seed, the crop, or a product from the crop; or
  - (B) has the right or obligation to purchase, receive, or direct the disposition of the crop or a product from the crop.
- (4) A contract to grow seed in connection with an identity preserved crop program.

Sec. 5. As used in this chapter, "seed" refers to agricultural seed or vegetable seed (as defined in IC 15-4-1-3) used to grow a commercial agricultural or a commercial vegetable crop.

Sec. 6. As used in this chapter, "seed contract" refers to a written contract between a seed supplier and a farmer that a farmer must sign to obtain the seed or the right to plant the seed.

Sec. 7. As used in this chapter, "seed supplier" refers to a person engaged in commercial production and supply of either of the following:

- (1) Seed.
- (2) Technology genetically engineered into seed.

Sec. 8. A provision of a seed contract in conflict with this chapter is unenforceable against a farmer.

Sec. 9. A provision of a seed contract that purports to waive a provision of this chapter is unenforceable against a farmer.

Sec. 10. A choice of law provision in a seed contract does not limit the application of this chapter.

Sec. 11. (a) As used in this section, "commissioner" refers to the state seed commissioner designated under IC 15-4-1-2.

(b) A seed contract may not give or be interpreted to give a seed supplier or an agent of a seed supplier the right to enter real property owned or occupied by the farmer to acquire samples of the crop grown from the seed or any other plant growing on the real property unless all of the following apply:

- (1) The seed supplier gives written notice to the farmer and the commissioner of the seed supplier's intent to enter the real property. The notice must be given not later than five (5) business days before the day the seed supplier or the seed supplier's agent enters the real property. The notice must



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1 include the following information:

2 (A) The date and time of the entry upon the land.

3 (B) The purpose for the entry upon the land.

4 (2) The seed supplier must permit the farmer, the  
5 commissioner, or the agents of the farmer or the  
6 commissioner to accompany the seed supplier or the seed  
7 supplier's agent while samples are taken.

8 (3) The seed supplier must permit the farmer, the  
9 commissioner, or the agents of the farmer or the  
10 commissioner to take matching samples or receive split  
11 samples of any samples taken by the seed supplier.

12 (c) The seed supplier must provide reasonable cooperation to  
13 the farmer, the commissioner, or the agents of the farmer or the  
14 commissioner during the course of activities described in  
15 subsection (a)(2) and (a)(3).

16 (d) If the commissioner or an agent of the commissioner  
17 accompanies the seed supplier on the real property to take samples  
18 under this section, the seed supplier and the farmer shall each pay  
19 fifty percent (50%) of the reasonable costs incurred by the  
20 commissioner or the commissioner's agent, as determined by the  
21 commissioner, in connection with such activities.

22 (e) In an action on the seed contract between the seed supplier  
23 and the farmer, the prevailing party may recover the costs that the  
24 prevailing party paid under subsection (d) in addition to any other  
25 damages to which the prevailing party is entitled.

26 (f) A seed supplier may obtain an order from a court with  
27 jurisdiction authorizing the seed supplier or the seed supplier's  
28 agent to enter real estate owned or occupied by a farmer where  
29 seed that is the subject of a seed contract is growing. If the court  
30 issues such an order, the order may require that if any samples are  
31 taken, matching or split samples must be taken by a person who is  
32 independent from the seed supplier.

33 (g) The commissioner may adopt rules under IC 4-22-2 to  
34 implement this section.

35 Sec. 12. (a) As used in this section, "suit" refers to a suit  
36 commenced against a farmer by a seed supplier to enforce its  
37 rights under, or in connection with, a seed contract.

38 (b) If a seed supplier files suit against a farmer, the seed  
39 supplier shall provide simultaneous written notice of the suit to the  
40 commissioner of agriculture.

41 (c) Failure to give notice of the suit to the commissioner of  
42 agriculture as provided in subsection (b) does not impair the

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jurisdiction of the court to hear the suit.

(d) A seed supplier that fails to give notice to the commissioner of agriculture as provided in subsection (b) commits a Class B infraction.

(e) The commissioner of agriculture shall keep a file of all notices of suits received under this section.

Sec. 13. (a) A farmer has a right of action against a seed supplier if the seed supplier or an agent of the seed supplier enters real property owned or occupied by the farmer in violation of section 11 of this chapter.

(b) If a farmer prevails in an action filed under this section, the farmer is entitled to recover from the seed supplier all of the following:

(1) Any actual damages proven by the farmer resulting from the seed supplier's violation of section 11 of this chapter.

(2) The farmer's reasonable attorney's fees and other litigation costs reasonably incurred in connection with the action.

SECTION 2. An emergency is declared for this act.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture, Natural Resources and Rural Development, to which was referred House Bill 1119, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 11, delete "January" and insert "July".

Page 2, between lines 1 and 2, begin a new line block indented and insert:

**"(3) An identity preserved contract."**

Page 2, line 24, delete "not".

Page 2, line 24, delete "does not violate" and insert **"is not enforceable against a farmer."**

Page 2, delete line 25.

Page 3, between lines 23 and 24, begin a new paragraph and insert:

**"(d) In an action on the seed contract between the seed supplier and the farmer, the prevailing party may recover the costs that the prevailing party paid under subsection (c) in addition to any other damages to which the prevailing party is entitled."**

Page 3, line 24, delete "(d)" and insert "(e)".

Page 3, line 31, delete "(e)" and insert "(f)".

Page 3, line 31, delete "of agriculture".

Page 4, line 31, after "seed" insert **"suppliers."**

Page 4, delete line 32.

and when so amended that said bill do pass.

(Reference is to HB 1119 as introduced.)

LYTLE, Chair

Committee Vote: yeas 9, nays 2.



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## COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred House Bill No. 1119, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 4, after "13." insert **"Inspections Under"**.

Page 1, delete lines 5 through 17, begin a new paragraph and insert:

**"Sec. 1. (a) Except as provided in section 2 of this chapter, this chapter applies to the inspection of seed and the crop growing from seed by a seed supplier under the seed supplier's rights in a seed contract.**

**(b) Other applicable Indiana law not in conflict with this chapter applies to a seed supplier inspecting seed and the crop growing from seed under the seed supplier's rights in a seed contract.**

**Sec. 2. This chapter does not apply to an inspection by a seed supplier under the provisions of a production contract.**

**Sec. 3. As used in this chapter, "farmer" refers to a person who is engaged in commercial farming and who plants seed in Indiana under a seed contract for purposes of growing a commercial grain crop.**

**Sec. 4. As used in this chapter, "production contract" refers to any of the following:**

- (1) A contract to grow seed for demonstration purposes.**
- (2) A contract to grow seed for research purposes.**
- (3) A contract to grow seed under which the seed supplier:**
  - (A) retains title to the seed, the crop, or a product from the crop; or**
  - (B) has the right or obligation to purchase, receive, or direct the disposition of the crop or a product from the crop.**
- (4) A contract to grow seed in connection with an identity preserved crop program."**

Page 2, delete lines 1 through 2.

Page 2, line 3, delete "4" and insert "5".

Page 2, delete lines 6 through 26, begin a new paragraph and insert:

**"Sec. 6. As used in this chapter, "seed contract" refers to a written contract between a seed supplier and a farmer that a farmer must sign to obtain the seed or the right to plant the seed.**

**Sec. 7. As used in this chapter, "seed supplier" refers to a person engaged in commercial production and supply of either of the following:**

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**(1) Seed.****(2) Technology genetically engineered into seed."**

Page 2, line 28, delete "void" and insert **"unenforceable against a farmer"**.

Page 2, line 30, delete "void" and insert **"unenforceable against a farmer"**.

Page 2, delete lines 31 through 33, begin a new paragraph and insert:

**"Sec. 10. A choice of law provision in a seed contract does not limit the application of this chapter."**

Page 2, line 34, delete "12" and insert **"11"**.

Page 3, line 15, delete "(4)", begin a new paragraph and insert:  
**"(c)".**

Page 3, line 17, after "in" insert **"subsection (a)(2) and (a)(3)."**

Page 3, delete line 18.

Page 3, line 19, delete "(c)" and insert **"(d)"**.

Page 3, line 25, delete "(d)" and insert **"(e)"**.

Page 3, line 27, delete "(c)" and insert **"(d)"**.

Page 3, line 29, delete "(e)" and insert **"(f)"**.

Page 3, line 32, delete "However, if" and insert **"If"**.

Page 3, line 33, delete "must" and insert **"may"**.

Page 3, line 36, delete "(f)" and insert **"(g)"**.

Page 3, delete lines 38 through 42.

Page 4, delete lines 1 through 12.

Page 4, line 13, delete "15" and insert **"12"**.

Page 4, line 13, delete "on the" and insert **"commenced against a farmer by a seed supplier to enforce its rights under, or in connection with, a seed contract."**

Page 4, delete lines 14 through 15.

Page 4, line 16, delete "all of the".

Page 4, delete line 17.

Page 4, line 18, delete "(1) The" and insert **"the"**.

Page 4, run in lines 16 through 19.

Page 4, delete lines 20 through 27.

Page 4, delete lines 36 through 42, begin a new paragraph and insert:

**"Sec. 13. (a) A farmer has a right of action against a seed supplier if the seed supplier or an agent of the seed supplier enters real property owned or occupied by the farmer in violation of section 11 of this chapter.**

**(b) If a farmer prevails in an action filed under this section, the farmer is entitled to recover from the seed supplier all of the**

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following:

- (1) Any actual damages proven by the farmer resulting from the seed supplier's violation of section 11 of this chapter.**
- (2) The farmer's reasonable attorney's fees and other litigation costs reasonably incurred in connection with the action."**

Page 5, delete lines 1 through 12.

and when so amended that said bill do pass.

(Reference is to HB 1119 as printed January 30, 2002.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 0.

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